Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 88-344

In The

Supreme Court of the United States

October Term, 1988

G. ROBIN OSCAR,

Petitioner,

v.

CLOVERVALE FOODS PROCESSING, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENT'S MEMORANDUM IN OPPOSITION

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3 pp

This is a premises liability action under South Carolina law, and it is in federal court under the diversity jurisdiction. The plaintiff fell at the defendant's peach processing plant while helping unload 55 gallon drums. At trial, the district judge granted the defendant's motion for judgment notwithstanding the verdict upon the grounds that the plaintiff assumed the risk of any injury arising out of his work at the defendant's peach packing plant and that there was insufficient evidence from which a reasonable jury could infer that the defendant had been negligent in causing the plaintiff's injury. The Court of Appeals for the Fourth Circuit, in a concise and well-reasoned opinion, affirmed the trial court's order.

The lower courts' orders reflect the considered judgments of the trial court and the Court of Appeals that, giving the plaintiff the benefit of all reasonable inferences from the evidence, there was insufficient evidence upon which reasonable men and women could return a verdict in favor of the plaintiff. The district court and the Court of Appeals correctly determined that there was no factual issue to be submitted to the jury. The plaintiff makes a spurious argument in his petition that he has been deprived of his constitutional right to a jury trial. While it is clear that questions of fact must be decided by a jury, it is also clear that the question of whether there is sufficient evidence to raise an issue of fact to be decided by the jury is a question of law to be decided by the court. *Holter v. Moore and Co.*, 702 F.2d 854, 855 (10th Cir. 1983), *cert. denied*, 464 U.S. 937 (1983). 9 Wright & Miller, *Federal Practice and Procedure* § 2524 (1971).

The plaintiff's argument that he was deprived of his right to a jury trial under the Seventh Amendment to the

Constitution is unfounded because the lower court properly ruled that there was no issue of fact to be submitted to the jury. Clearly, no constitutional infringement occurs when the trial court properly withdraws a case from the jury when there is insufficient evidence to create an issue of fact. *Manaia v. Potomac Electric Power Co.*, 268 F.2d 793, 798-99 (4th Cir. 1959), *cert. denied*, 361 U.S. 913 (1959).

Thus, the petition for a writ of certiorari should be denied because the lower court's decision is in accordance with clearly established precedents, and it is not in conflict with any decision of this court. The Court of Appeals, decision correctly disposes of all issues raised by the plaintiff in his appeal to that court.

Respectfully submitted,

/s/ James D. Brice
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